

REMARKS

Claims 25-48 are pending in this Application. Claims 49-67 have been previously canceled without prejudice. In the Office Action mailed February 3, 2006, the Examiner rejected Claims 25-48 under 35 U.S.C. § 103(a) as being unpatentable over Naji (US Patent No. 6,030,477) in view of admitted prior art (e.g., Specification para. [0031] and Table 1) with or without Wingerson (US Patent No. 6,419,788).

In numbered paragraph 7 of the Office Action, the Examiner states:

"Naji teaches a composite building material comprising cellulose fibers which reinforce the product (col. 2, lines 7-19, and an aggregate (siliceous material, Abstract), a density modifier (col. 2, line 21) and one or more additives (col. 2, lines 20-31). The admitted prior art teaches that conventional pulping and washing at temperatures (55-60 °C) results in cellulose fibers, e.g. the cellulose fibers of Naji, having a COD content of 5 kg/ton. . . the temperature of admitted prior art is considered an elevated temperature. The claimed 'less than 5 kg/ton' and in claims 44-48 'greater than 5 kg/ton' reads on 5 kg/ton of admitted prior art. The 'less than 5.0 kg/ton,' does not define over the washing of the admitted prior art or the product of Naji. Also, Wingerson teaches producing substantially pure cellulose (col. 3, line 56) by first treating cellulosic material with steam and then washing with alkaline hot wash water containing dissolved oxygen at elevated temperatures, e.g., 180 to 240 °C to remove decompose, mobilize and remove lignon, extractives and residual hemicellulose, e.g., the COD's. It would have been obvious to the artisan to further remove the COD's of Naji and/or the admitted prior art using the elevated washing temperature of Wingerson. Such a washing would lower the COD's of Naji to less than 5 kg/ton. It is noted

that the instant process can also use oxidized wash liquor, e.g. the same wash water used by Wingerson, see instant specification page 3, [0009].".."

Applicants respectfully disagree with the Examiner's statement and firstly points out that Naji does not teach or suggest all the claim limitations of the independent claims, respectfully submitted as amended Claims 25 and 33. Claims 25 and 33 have been amended to include "wherein at least a portion of the fibers are pretreated with an elevated temperature washing process to reduce COD content to less than 5 kg/ton." [Emphasis shows amended text.] Claim 25 additionally includes "and wherein the cellulose fibers add strength reinforcement to the composite building material." Applicants submit that Naji, a patent issued on February 29, 2000, merely discloses a particular dry cement formulation for preparing an autoclave cured cementitious product (Abstract). While Naji does indicate that the formulation could include a fibrous material (Col. 2, l. 7), there is no suggestion or motivation in Naji or to one of ordinary skill in the art to have fibrous material with a reduced COD content, nor is there any suggestion or motivation in Naji to have at least a portion of the fibers pretreated with an elevated temperature washing process to reduce COD content to less than 5 kg/ton. Applicants respectfully request the Examiner point to such teachings in Naji should they exist. Accordingly, Applicants submit that Naji does not suggest or disclose at least a portion of their fibers pretreated with an elevated temperature washing process to reduce COD content to less than 5 kg/ton and further submit that such a disclosure is unpredictable based on Naji or the knowledge known to one of

ordinary skill in the respective art. Applicants point out that at least some degree of predictability is required for a showing of obviousness. Accordingly, Applicant submits that it is not obvious to one having ordinary skill in the art to modify Naji's teaching to include at least a portion of the fibers pretreated with an elevated temperature washing process to reduce COD content to less than 5 kg/ton. Applicants further submit the teaching of Wingerson, in a patent issued on July 16, 2002, and not for public disclosure before July 16, 2002, would not have been available to combine with Naji. Applicants remind the Examiner that one must step backward in time and into the shoes worn by the hypothetical person of ordinary skill in the art when the invention was unknown and just before it was made. Applicant points out that Wingerson was not available at the time just before the invention was made because the instant invention was filed October 2, 2001, with a priority filing date of October 17, 2000, at which time Wingerson was not available. Therefore, there would be no way of modifying Naji with Wingerson at a time just before the instant invention was made. In view of all factual information, Applicants submit that the claimed invention as a whole would have not been obvious at that time to a person of ordinary skill in the art. Applicants submit that amended Claims 25 and 33 are patentably distinct from the cited references and respectfully request entry and allowance of such claims, including all claims depending therefrom.

CONCLUSION

Applicants respectfully submit that the Application is in condition for allowance, and Applicants earnestly seek such allowance of Claims 25-48 as provided in the Listing of Claims beginning on page 3 of this paper. Should the Examiner have questions, comments, or suggestions in furtherance of the prosecution of this Application, please contact Applicants' representative at 214.999.4330. Applicants, through their representative, stand ready to conduct a telephone interview with the Examiner to review this Application if the Examiner believes that such an interview would assist in the advancement of this Application.

To the extent that any further fees are required during the pendency of this Application, including petition fees, the Commissioner is hereby authorized to charge payment of any additional fees, including, without limitation, any fees under 37 C.F.R. § 1.16 or 37 C.F.R. § 1.17, to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP and reference Attorney Docket No. 129843.1022. In the event that any additional time is needed for this filing, or any additional time in excess of that requested in a petition for an extension of time, please consider this a petition for an extension of time for any needed extension of time pursuant to 37 C.F.R. § 1.136 or any other section or provision of Title 37. Applicants respectfully request that the Commissioner grant any such petition and authorize the Commissioner to charge the Deposit Account referenced above. Please credit any overpayments to this same Deposit Account.

Attorney No. HARD1.015A (129843-1022)
Customer No. 60148

AMENDMENT AND RESPONSE
APPLICATION NO. 09/970,389

12

This is intended to be a complete response to the Office
Action mailed February 3, 2006.

**Please direct all correspondence to the practitioner listed
below at Customer No. 60148.**

Respectfully submitted,

Monique A. Vander Molen

Monique A. Vander Molen
Registration No. 53,716

Gardere Wynne Sewell LLP
Thanksgiving Tower
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Telephone: 214.999.4330
Facsimile: 214.999.3623
Email: ip@gardere.com

Dated: May 3, 2006